IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6842 OF 2005

Yusuf Gulam Hamid Patel).. Petitioner

Versus

Taherbai T. Poonawala and others).. Respondents

Mr.M.T. Pise for the Petitioner.

Mr.F.E. Devitre i/b.Federal & Rashmikant for Respondent Nos.1 and 3 to 6.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 26TH OCTOBER 2005

P.C.:

. This Petition challenges the concurrent findings of fact of both the Courts below. The Courts below have held that the bona fide requirement of the suit premises for Respondent No.3 has been established. The Courts have also concluded, after considering the hardship, that a decree must be passed in favour of the Respondents.

2. According to the Petitioner, after the Appellate Court passed its impugned order, he became aware that the Respondents had other premises which were available to them and they have not brought it to the notice of the Appellate Court. These premises became available to the Respondents on 11th March 2005. They admeasure about 800 sq.ft. and is situate in House No.585-86-87, Sachapir

Street, Pune.

3. The Respondents have filed an affidavit contending that though these premises have become available, by a family arrangement, the premises would go to Respondent No.2 and Respondent No.3 would not be entitled to these premises. In my view, the Appellate Court would have to consider the issue of comparative hardship in the light of the premises at House No.585-86-87, Sachipar Street, Pune which, according to the Petitioner, are available for fulfilling the need of the Respondents.

4. The orders of the trial Court and the Appellate Court are confirmed in respect of their findings of bona fide requirement and need of Respondent No.3 for the suit premises. However, the Appellate Court will consider the issue of comparative hardship under Section 13(2) of the Rent Act in the light of the statements contained in paragraph 10 of the Writ Petition. The Appellate Court will decide whether the property mentioned in paragraph 10 of the Writ Petition is in fact available to the Respondents and, if so, whether the hardship to the Respondents would be greater if the Suit is not decreed.

5. Writ Petition disposed of accordingly.

6. Writ to go down immediately.

7. Parties to appear before the Appellate Court on 28th November 2005. The Appellate Court to hear and decide the issue within a period of two months therefrom.

8. Respondents not to act on possession warrant till the Appeal is decided.